
SENATE BILL No. 423

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-10-5.5-22; IC 5-10.2-4-11; IC 5-14-3-4; IC 10-12-2-10.5; IC 33-38-6-28; IC 33-39-7-26; IC 36-8.

Synopsis: Forfeiture of public pensions for misconduct. Provides for the forfeiture of all or part of a pension benefit from the state excise police and conservation enforcement officers' retirement fund, the public employees' retirement fund, the teachers' retirement fund, the state police benefit system, the judges' retirement system, the prosecuting attorneys retirement fund, the 1925 police pension fund, the 1937 firefighters' pension fund, the 1953 police pension fund, the 1977 police officers' and firefighters' pension and disability fund, and the sheriff's department's pension trust fund for misconduct by a public officer or employee. Provides that: (1) meetings to receive information about or to discuss, before a determination, the forfeiture of a pension benefit may be held in an executive session; and (2) the records concerning the forfeiture are exempt from disclosure at the discretion of the pension administrator, except for the final determination, which is available for inspection and copying.

Effective: July 1, 2005.

Clark

January 13, 2005, read first time and referred to Committee on Pensions and Labor.

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First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

SENATE BILL No. 423

A BILL FOR AN ACT to amend the Indiana Code concerning pensions.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 5-10-5.5-22 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2005]: **Sec. 22. (a) As used in this section, "PERF board" refers**
4 **to the board of trustees of the public employees' retirement fund.**

5 **(b) Notwithstanding any other provision of Indiana law, a**
6 **participant in the state excise police and conservation enforcement**
7 **officers' retirement fund is required to render honorable service as**
8 **a condition for receiving an annual retirement allowance under**
9 **this chapter.**

10 **(c) If a participant commits misconduct while in active service**
11 **on the force, the PERF board shall conduct a hearing to determine**
12 **whether:**

13 **(1) the misconduct constitutes a breach of the condition that**
14 **the participant's service be honorable; and**

15 **(2) forfeiture of all or part of the participant's annual**
16 **retirement allowance is appropriate.**

17 **(d) The PERF board shall consider and balance the following**



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factors against the goals of the public pension laws in making a determination under subsection (c):

- (1) The participant's length of service.
- (2) The reason for the participant's retirement.
- (3) The extent to which the participant's benefit has vested.
- (4) The participant's duties.
- (5) The participant's history of public service, including the public service covered by the state excise police and conservation enforcement officers' retirement fund and other public employment or service completed by the participant.
- (6) The nature of the misconduct, including the following:
 - (A) The seriousness of the misconduct.
 - (B) Whether the misconduct was a single offense or multiple offenses.
 - (C) Whether the misconduct was an isolated, one (1) time occurrence or a continuing event.
- (7) The relationship between the misconduct and the participant's public service.
- (8) The degree of the participant's moral turpitude, guilt, or culpability, including the participant's motives for and personal gain from the misconduct.
- (9) The availability and adequacy of other punishment or sanctions for the misconduct, including criminal prosecution.
- (10) Other personal circumstances of the participant that bear on the justness of forfeiture.

(e) The PERF board shall issue a determination not later than thirty (30) days after the hearing under subsection (c) and provide a copy to the participant.

(f) If the PERF board determines under subsection (c) that the forfeiture of all or part of the participant's annual retirement allowance is appropriate, the PERF board shall also determine whether forfeiture of all or part of the benefits to which a surviving spouse, parent, or dependent child of the participant would otherwise be entitled under this chapter is appropriate.

(g) If the PERF board determines under subsection (c) that a partial forfeiture of the participant's annual retirement allowance is warranted, the PERF board shall calculate the participant's annual retirement allowance as if the participant had retired or withdrawn from the state excise police and conservation enforcement officers' retirement fund on the date that the participant's misconduct first occurred.

(h) If the calculation of the participant's annual retirement

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allowance under subsection (g) would result in an excessive annual retirement allowance or an excessive forfeiture, given the nature and extent of the participant's misconduct, the PERF board may select a date that is reasonably calculated to impose a forfeiture that reflects both the nature and extent of:

- (1) the participant's misconduct; and
- (2) the participant's honorable service.

(i) If a prosecuting attorney undertakes the prosecution of or obtains a criminal conviction against an individual whom the prosecuting attorney knows, or has reason to believe, is a participant in the state excise police and conservation enforcement officers' retirement fund, the prosecuting attorney shall:

- (1) notify the PERF board in writing of the prosecution or conviction; and
- (2) provide any information requested by the PERF board to enable the PERF board to make the determination required by this section.

(j) If the state terminates a public employee whom the state knows, or has reason to believe, is a participant in the state excise police and conservation enforcement officers' retirement fund, the state shall:

- (1) notify the PERF board in writing of the state's action; and
- (2) provide any information requested by the PERF board to enable the PERF board to make the determination required by this section.

(k) A meeting or hearing held to receive information about or to discuss, before a determination, whether:

- (1) a participant's misconduct constitutes a breach of the condition that the participant's service be honorable; and
- (2) forfeiture of all or part of the participant's annual retirement allowance is appropriate;

under this section may be held as an executive session under IC 5-14-1.5-6.1(b)(1).

(l) Records containing information about whether:

- (1) a participant's misconduct constitutes a breach of the condition that the participant's service be honorable; and
- (2) forfeiture of all or part of the participant's annual retirement allowance is appropriate;

under this section are exempt from disclosure under IC 5-14-3-4(b)(21). The PERF board's final determination under this section is available for inspection and copying under IC 5-14-3.

SECTION 2. IC 5-10.2-4-11 IS ADDED TO THE INDIANA CODE

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1 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
2 1, 2005]: **Sec. 11. (a) This section does not apply to a member's
3 annuity savings account (as described in IC 5-10.2-2-3).**

4 **(b) Notwithstanding any other provision of Indiana law, a
5 member of the fund is required to render honorable service as a
6 condition for receiving a retirement benefit under this article,
7 IC 5-10.3, and IC 21-6.1.**

8 **(c) If a member commits misconduct while an active member of
9 the fund, the board shall conduct a hearing to determine whether:**

10 **(1) the misconduct constitutes a breach of the condition that
11 the member's service be honorable; and**

12 **(2) forfeiture of all or part of the member's retirement benefit
13 is appropriate.**

14 **(d) The board shall consider and balance the following factors
15 against the goals of the public pension laws in making a
16 determination under subsection (c):**

17 **(1) The member's length of service.**

18 **(2) The reason for the member's retirement.**

19 **(3) The extent to which the member's benefit has vested.**

20 **(4) The member's duties.**

21 **(5) The member's history of public service, including the
22 public service covered by the fund and other public
23 employment or service completed by the member.**

24 **(6) The nature of the misconduct, including the following:**

25 **(A) The seriousness of the misconduct.**

26 **(B) Whether the misconduct was a single offense or
27 multiple offenses.**

28 **(C) Whether the misconduct was an isolated, one (1) time
29 occurrence or a continuing event.**

30 **(7) The relationship between the misconduct and the
31 member's public service.**

32 **(8) The degree of the member's moral turpitude, guilt, or
33 culpability, including the member's motives for and personal
34 gain from the misconduct.**

35 **(9) The availability and adequacy of other punishment or
36 sanctions for the misconduct, including criminal prosecution.**

37 **(10) Other personal circumstances of the member that bear
38 on the justness of forfeiture.**

39 **(e) The board shall issue a determination not later than thirty
40 (30) days after the hearing under subsection (c) and provide a copy
41 to the member.**

42 **(f) If the board determines under subsection (c) that the**

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1 forfeiture of all or part of the member's retirement benefit is
 2 appropriate, the board shall also determine whether forfeiture of
 3 all or part of the benefits to which a surviving spouse, dependent,
 4 or beneficiary of the member would otherwise be entitled under
 5 this article, IC 5-10.3, or IC 21-6.1 is appropriate.

6 (g) If the board determines under subsection (c) that a partial
 7 forfeiture of the member's retirement benefit is warranted, the
 8 board shall calculate the member's retirement benefit as if the
 9 member had retired or withdrawn from the fund on the date that
 10 the member's misconduct first occurred.

11 (h) If the calculation of the member's retirement benefit under
 12 subsection (g) would result in an excessive retirement benefit or an
 13 excessive forfeiture, given the nature and extent of the member's
 14 misconduct, the board may select a date that is reasonably
 15 calculated to impose a forfeiture that reflects both the nature and
 16 extent of:

- 17 (1) the member's misconduct; and
- 18 (2) the member's honorable service.

19 (i) If a prosecuting attorney undertakes the prosecution of or
 20 obtains a criminal conviction against an individual whom the
 21 prosecuting attorney knows, or has reason to believe, is a
 22 participant in the fund, the prosecuting attorney shall:

- 23 (1) notify the board in writing of the prosecution or
- 24 conviction; and
- 25 (2) provide any information requested by the board to enable
- 26 the board to make the determination required by this section.

27 (j) If the senate removes a public officer from office or an
 28 employer terminates a public employee whom the senate or the
 29 employer knows or has reason to believe is a member of the fund,
 30 the secretary of the senate or the employer shall:

- 31 (1) notify the board in writing of the action of the senate or
- 32 the employer; and
- 33 (2) provide any information requested by the board to enable
- 34 the board to make the determination required by this section.

35 (k) A meeting or hearing held to receive information about or
 36 to discuss, before a determination, whether:

- 37 (1) a member's misconduct constitutes a breach of the
- 38 condition that the member's service be honorable; and
- 39 (2) forfeiture of all or part of the members' retirement benefit
- 40 is appropriate;

41 under this section may be held as an executive session under
 42 IC 5-14-1.5-6.1(b)(1).

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(l) Records containing information about whether:

(1) a member's misconduct constitutes a breach of the condition that the member's service be honorable; and

(2) forfeiture of all or part of the member's retirement benefit is appropriate;

under this section are exempt from disclosure under IC 5-14-3-4(b)(21). The board's final determination under this section is available for inspection and copying under IC 5-14-3.

SECTION 3. IC 5-14-3-4, AS AMENDED BY P.L.173-2003, SECTION 5, AND AS AMENDED BY P.L.200-2003, SECTION 3, IS CORRECTED AND AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) The following public records are excepted from section 3 of this chapter and may not be disclosed by a public agency, unless access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery:

(1) Those declared confidential by state statute.

(2) Those declared confidential by rule adopted by a public agency under specific authority to classify public records as confidential granted to the public agency by statute.

(3) Those required to be kept confidential by federal law.

(4) Records containing trade secrets.

(5) Confidential financial information obtained, upon request, from a person. However, this does not include information that is filed with or received by a public agency pursuant to state statute.

(6) Information concerning research, including actual research documents, conducted under the auspices of an institution of higher education, including information:

(A) concerning any negotiations made with respect to the research; and

(B) received from another party involved in the research.

(7) Grade transcripts and license examination scores obtained as part of a licensure process.

(8) Those declared confidential by or under rules adopted by the supreme court of Indiana.

(9) Patient medical records and charts created by a provider, unless the patient gives written consent under IC 16-39.

(10) Application information declared confidential by the twenty-first century research and technology fund board under IC 4-4-5.1.

(11) A photograph, a video recording, or an audio recording of an autopsy, except as provided in IC 36-2-14-10.

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(b) Except as otherwise provided by subsection (a), the following public records shall be excepted from section 3 of this chapter at the discretion of a public agency:

(1) Investigatory records of law enforcement agencies. However, certain law enforcement records must be made available for inspection and copying as provided in section 5 of this chapter.

(2) The work product of an attorney representing, pursuant to state employment or an appointment by a public agency:

(A) a public agency;

(B) the state; or

(C) an individual.

(3) Test questions, scoring keys, and other examination data used in administering a licensing examination, examination for employment, or academic examination before the examination is given or if it is to be given again.

(4) Scores of tests if the person is identified by name and has not consented to the release of the person's scores.

(5) The following:

(A) Records relating to negotiations between the department of commerce, the Indiana development finance authority, the **Indiana** film commission, the Indiana business modernization and technology corporation, or economic development commissions with industrial, research, or commercial prospects, if the records are created while negotiations are in progress.

(B) Notwithstanding clause (A), the terms of the final offer of public financial resources communicated by the department of commerce, the Indiana development finance authority, the Indiana film commission, the Indiana business modernization and technology corporation, or economic development commissions to an industrial, a research, or a commercial prospect shall be available for inspection and copying under section 3 of this chapter after negotiations with that prospect have terminated.

(C) When disclosing a final offer under clause (B), the department of commerce shall certify that the information being disclosed accurately and completely represents the terms of the final offer.

(6) Records that are intra-agency or interagency advisory or deliberative material, including material developed by a private contractor under a contract with a public agency, that are expressions of opinion or are of a speculative nature, and that are

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communicated for the purpose of decision making.

(7) Diaries, journals, or other personal notes serving as the functional equivalent of a diary or journal.

(8) Personnel files of public employees and files of applicants for public employment, except for:

(A) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;

(B) information relating to the status of any formal charges against the employee; and

(C) *information concerning the factual basis for a disciplinary action* ~~action~~ in which final action has been taken and that resulted in the employee being *disciplined* ~~suspended~~, ~~demoted~~, or discharged.

However, all personnel file information shall be made available to the affected employee or the employee's representative. This subdivision does not apply to disclosure of personnel information generally on all employees or for groups of employees without the request being particularized by employee name.

(9) Minutes or records of hospital medical staff meetings.

(10) Administrative or technical information that would jeopardize a record keeping or security system.

(11) Computer programs, computer codes, computer filing systems, and other software that are owned by the public agency or entrusted to it and portions of electronic maps entrusted to a public agency by a utility.

(12) Records specifically prepared for discussion or developed during discussion in an executive session under IC 5-14-1.5-6.1. However, this subdivision does not apply to that information required to be available for inspection and copying under subdivision (8).

(13) The work product of the legislative services agency under personnel rules approved by the legislative council.

(14) The work product of individual members and the partisan staffs of the general assembly.

(15) The identity of a donor of a gift made to a public agency if:

(A) the donor requires nondisclosure of the donor's identity as a condition of making the gift; or

(B) after the gift is made, the donor or a member of the donor's family requests nondisclosure.

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(16) Library or archival records:

(A) which can be used to identify any library patron; or

(B) deposited with or acquired by a library upon a condition that the records be disclosed only:

(i) to qualified researchers;

(ii) after the passing of a period of years that is specified in the documents under which the deposit or acquisition is made; or

(iii) after the death of persons specified at the time of the acquisition or deposit.

However, nothing in this subdivision shall limit or affect contracts entered into by the Indiana state library pursuant to IC 4-1-6-8.

(17) The identity of any person who contacts the bureau of motor vehicles concerning the ability of a driver to operate a motor vehicle safely and the medical records and evaluations made by the bureau of motor vehicles staff or members of the driver licensing *medical advisory board. committee*. However, upon written request to the commissioner of the bureau of motor vehicles, the driver must be given copies of the driver's medical records and evaluations that concern the driver.

(18) School safety and security measures, plans, and systems, including emergency preparedness plans developed under 511 IAC 6.1-2-2.5.

(19) A record or a part of a record, the public disclosure of which would have a reasonable likelihood of threatening public safety by exposing a vulnerability to terrorist attack. A record described under this subdivision includes:

(A) a record assembled, prepared, or maintained to prevent, mitigate, or respond to an act of terrorism under IC 35-47-12-1 or an act of agricultural terrorism under IC 35-47-12-2;

(B) vulnerability assessments;

(C) risk planning documents;

(D) needs assessments;

(E) threat assessments;

(F) domestic preparedness strategies;

(G) the location of community drinking water wells and surface water intakes;

(H) the emergency contact information of emergency responders and volunteers;

(I) infrastructure records that disclose the configuration of critical systems such as communication, electrical, ventilation, water, and wastewater systems; and

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(J) detailed drawings or specifications of structural elements, floor plans, and operating, utility, or security systems, whether in paper or electronic form, of any building or facility located on an airport (as defined in IC 8-21-1-1) that is owned, occupied, leased, or maintained by a public agency. A record described in this clause may not be released for public inspection *by any public agency* without the prior approval of the public agency *that owns, occupies, leases, or maintains the airport*. The ~~submitting~~ public agency *that owns, occupies, leases, or maintains the airport*:

(i) is responsible for determining whether the public disclosure of a record or a part of a record has a reasonable likelihood of threatening public safety by exposing a vulnerability to terrorist attack; and

(ii) must identify a record described under item (i) and clearly mark the record as "confidential and not subject to public disclosure under ~~IC 5-14-3-4(19)(f)~~ IC 5-14-3-4 without approval of (insert name of ~~submitting~~ public agency)".

This subdivision does not apply to a record or portion of a record pertaining to a location or structure owned or protected by a public agency in the event that an act of terrorism under IC 35-47-12-1 or an act of agricultural terrorism under IC 35-47-12-2 has occurred at that location or structure, unless release of the record or portion of the record would have a reasonable likelihood of threatening public safety by exposing a vulnerability of other locations or structures to terrorist attack.

(20) The following personal information concerning a customer of a municipally owned utility (as defined in IC 8-1-2-1):

(A) Telephone number.

(B) Address.

(C) Social Security number.

(21) Records containing information about whether:

(A) the misconduct of a public pension fund member or participant constitutes a breach of the condition that the fund member's or participant's service be honorable; and

(B) forfeiture of all or part of the fund member's or participant's retirement allowance, retirement benefit, or pension amount is appropriate;

except that a final determination by the administrator of the public pension fund is available for inspection and copying.

(c) Nothing contained in subsection (b) shall limit or affect the right

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of a person to inspect and copy a public record required or directed to be made by any statute or by any rule of a public agency.

(d) Notwithstanding any other law, a public record that is classified as confidential, other than a record concerning an adoption, shall be made available for inspection and copying seventy-five (75) years after the creation of that record.

(e) Notwithstanding subsection (d) and section 7 of this chapter:

(1) public records subject to IC 5-15 may be destroyed only in accordance with record retention schedules under IC 5-15; or

(2) public records not subject to IC 5-15 may be destroyed in the ordinary course of business.

SECTION 4. IC 10-12-2-10.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 10.5 (a) Notwithstanding any other provision of Indiana law, an employee beneficiary is required to render honorable service as a condition for receiving a monthly pension amount under this article.**

(b) If an employee beneficiary commits misconduct while in the active service of the department, the department shall conduct a hearing to determine whether:

(1) the misconduct constitutes a breach of the condition that the employee beneficiary's service be honorable; and

(2) forfeiture of all or part of the employee beneficiary's monthly pension amount is appropriate.

(c) The department shall consider and balance the following factors against the goals of the public pension laws in making a determination under subsection (b):

(1) The employee beneficiary's length of service.

(2) The reason for the employee beneficiary's retirement.

(3) The extent to which the employee beneficiary's benefit has vested.

(4) The employee beneficiary's duties.

(5) The employee beneficiary's history of public service, including the public service covered by the pension trust and other public employment or service completed by the employee beneficiary.

(6) The nature of the misconduct, including the following:

(A) The seriousness of the misconduct.

(B) Whether the misconduct was a single offense or multiple offenses.

(C) Whether the misconduct was an isolated, one (1) time occurrence or a continuing event.

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(7) The relationship between the misconduct and the employee beneficiary's public service.

(8) The degree of the employee beneficiary's moral turpitude, guilt, or culpability, including the employee beneficiary's motives for and personal gain from the misconduct.

(9) The availability and adequacy of other punishment or sanctions for the misconduct, including criminal prosecution.

(10) Other personal circumstances of the employee beneficiary that bear on the justness of forfeiture.

(d) The department shall issue a determination not later than thirty (30) days after the hearing under subsection (b) and provide a copy to the employee beneficiary.

(e) If the department determines under subsection (b) that the forfeiture of all or part of the employee beneficiary's monthly pension amount is appropriate, the department shall also determine whether forfeiture of all or part of the benefits to which a surviving spouse or dependent child of the employee beneficiary would otherwise be entitled under this article is appropriate.

(f) If the department determines under subsection (b) that a partial forfeiture of the employee beneficiary's monthly pension amount is warranted, the department shall direct the trustee to recalculate the employee beneficiary's monthly pension amount as if the employee beneficiary had retired or resigned from the department on the date that the employee beneficiary's misconduct first occurred.

(g) If the calculation of the employee beneficiary's monthly pension amount under subsection (f) would result in an excessive retirement benefit or an excessive forfeiture, given the nature and extent of the employee beneficiary's misconduct, the department may select a date that is reasonably calculated to impose a forfeiture that reflects both the nature and extent of:

(1) the employee beneficiary's misconduct; and

(2) the employee beneficiary's honorable service.

(h) If a prosecuting attorney undertakes the prosecution of or obtains a criminal conviction against an individual whom the prosecuting attorney knows or has reason to believe is an employee beneficiary of the pension trust, the prosecuting attorney shall:

(1) notify the department in writing of the prosecution or conviction; and

(2) provide any information requested by the department to enable the department to make the determination required by this section.

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1 (i) A meeting or hearing held to receive information about or to
2 discuss, before a determination, whether:

3 (1) an employee beneficiary's misconduct constitutes a breach
4 of the condition that the employee beneficiary's service be
5 honorable; and

6 (2) forfeiture of all or a part of the employee beneficiary's
7 monthly pension amount is appropriate;
8 under this section may be held as an executive session under
9 IC 5-14-1.5-6.1(b)(1).

10 (j) Records containing information about whether:

11 (1) an employee beneficiary's misconduct constitutes a breach
12 of the condition that the employee beneficiary's service be
13 honorable; and

14 (2) forfeiture of all or part of the employee beneficiary's
15 monthly pension amount is appropriate;
16 under this section are exempt from disclosure under
17 IC 5-14-3-4(b)(21). The department's final determination under
18 this section is available for inspection and copying under IC 5-14-3.

19 SECTION 5. IC 33-38-6-28 IS ADDED TO THE INDIANA CODE
20 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
21 1, 2005]: Sec. 28. (a) Notwithstanding any other provision of
22 Indiana law, a participant in the judges' retirement system is
23 required to render honorable service as a condition for receiving
24 a retirement benefit under this article.

25 (b) If a participant commits misconduct while serving as a state
26 or county judge, the board shall conduct a hearing to determine
27 whether:

28 (1) the misconduct constitutes a breach of the condition that
29 the participant's service be honorable; and

30 (2) forfeiture of all or part of the participant's retirement
31 benefit is appropriate.

32 (c) The board shall consider and balance the following factors
33 against the goals of the public pension laws in making a
34 determination under subsection (b):

35 (1) The participant's length of service.

36 (2) The reason for the participant's retirement.

37 (3) The extent to which the participant's benefit has vested.

38 (4) The participant's duties.

39 (5) The participant's history of public service, including the
40 public service covered by the judges' retirement system and
41 other public employment or service completed by the
42 participant.

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(6) The nature of the misconduct, including the following:

(A) The seriousness of the misconduct.

(B) Whether the misconduct was a single offense or multiple offenses.

(C) Whether the misconduct was an isolated, one (1) time occurrence or a continuing event.

(7) The relationship between the misconduct and the participant's public service.

(8) The degree of the participant's moral turpitude, guilt, or culpability, including the participant's motives for and personal gain from the misconduct.

(9) The availability and adequacy of other punishment or sanctions for the misconduct, including criminal prosecution.

(10) Other personal circumstances of the participant that bear on the justness of forfeiture.

(d) The board shall issue a determination not later than thirty (30) days after the hearing under subsection (b) and provide a copy to the participant.

(e) If the board determines under subsection (b) that the forfeiture of all or part of the participant's retirement benefit is appropriate, the board shall also determine whether forfeiture of all or part of the benefits to which a surviving spouse or child of the participant would otherwise be entitled under this article is appropriate.

(f) If the board determines under subsection (b) that a partial forfeiture of the participant's retirement benefit is warranted, the board shall calculate the participant's retirement benefit as if the participant had retired or withdrawn from the judges' retirement system on the date that the participant's misconduct first occurred.

(g) If the calculation of the participant's retirement benefit under subsection (f) would result in an excessive retirement benefit or an excessive forfeiture, given the nature and extent of the participant's misconduct, the board may select a date that is reasonably calculated to impose a forfeiture that reflects both the nature and extent of:

(1) the participant's misconduct; and

(2) the participant's honorable service.

(h) If a prosecuting attorney undertakes the prosecution of or obtains a criminal conviction against an individual whom the prosecuting attorney knows or has reason to believe is a participant in the judges' retirement system, the prosecuting attorney shall:

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(1) notify the board in writing of the prosecution or conviction; and

(2) provide any information requested by the board to enable the board to make the determination required by this section.

(i) If the supreme court removes or retires a state or county judge from office whom the supreme court knows or has reason to believe is a participant in the judges' retirement system, the supreme court shall:

(1) notify the board in writing of the action of the supreme court; and

(2) provide any information requested by the board to enable the board to make the determination required by this section.

(j) A meeting or hearing held to receive information about or to discuss, before a determination, whether:

(1) a participant's misconduct constitutes a breach of the condition that the participant's service be honorable; and

(2) forfeiture of all or part of the participant's retirement benefit is appropriate;

under this section may be held as an executive session under IC 5-14-1.5-6.1(b)(1).

(k) Records containing information about whether:

(1) a participant's misconduct constitutes a breach of the condition that the participant's service be honorable; and

(2) forfeiture of all or part of the participant's retirement benefit is appropriate;

under this section are exempt from disclosure under IC 5-14-3-4(b)(21). The board's final determination under this section is available for inspection and copying under IC 5-14-3.

SECTION 6. IC 33-39-7-26 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 26. (a) Notwithstanding any other provision of Indiana law, a participant in the fund is required to render honorable service as a condition for receiving a retirement benefit under this chapter.

(b) If a participant commits misconduct while serving as an active member of the fund, the board shall conduct a hearing to determine whether:

(1) the misconduct constitutes a breach of the condition that the participant's service be honorable; and

(2) forfeiture of all or part of the participant's retirement benefit is appropriate.

(c) The board shall consider and balance the following factors

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1 against the goals of the public pension laws in making a
2 determination under subsection (b):

- 3 (1) The participant's length of service.
- 4 (2) The reason for the participant's retirement.
- 5 (3) The extent to which the participant's benefit has vested.
- 6 (4) The participant's duties.
- 7 (5) The participant's history of public service, including the
- 8 public service covered by the fund and other public
- 9 employment or service completed by the participant.
- 10 (6) The nature of the misconduct, including the following:
 - 11 (A) The seriousness of the misconduct.
 - 12 (B) Whether the misconduct was a single offense or
 - 13 multiple offenses.
 - 14 (C) Whether the misconduct was an isolated, one (1) time
 - 15 occurrence or a continuing event.
- 16 (7) The relationship between the misconduct and the
- 17 participant's public service.
- 18 (8) The degree of the participant's moral turpitude, guilt, or
- 19 culpability, including the participant's motives for and
- 20 personal gain from the misconduct.
- 21 (9) The availability and adequacy of other punishment or
- 22 sanctions for the misconduct, including criminal prosecution.
- 23 (10) Other personal circumstances of the participant that bear
- 24 on the justness of forfeiture.

25 (d) The board shall issue a determination not later than thirty
26 (30) days after the hearing under subsection (b) and provide a copy
27 to the participant.

28 (e) If the board determines under subsection (b) that the
29 forfeiture of all or part of the participant's retirement benefit is
30 appropriate, the board shall also determine whether forfeiture of
31 all or part of the benefits to which a surviving spouse or child of
32 the participant would otherwise be entitled under this chapter is
33 appropriate.

34 (f) If the board determines under subsection (b) that a partial
35 forfeiture of the participant's retirement benefit is warranted, the
36 board shall calculate the participant's retirement benefit as if the
37 participant had retired or withdrawn from the fund on the date
38 that the participant's misconduct first occurred.

39 (g) If the calculation of the participant's retirement benefit
40 under subsection (f) would result in an excessive retirement benefit
41 or an excessive forfeiture, given the nature and extent of the
42 participant's misconduct, the board may select a date that is

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reasonably calculated to impose a forfeiture that reflects both the nature and extent of:

- (1) the participant's misconduct; and
- (2) the participant's honorable service.

(h) If a prosecuting attorney undertakes the prosecution of or obtains a criminal conviction against an individual whom the prosecuting attorney knows or has reason to believe is a participant in the fund, the prosecuting attorney shall:

- (1) notify the board in writing of the prosecution or conviction; and
- (2) provide any information requested by the board to enable the board to make the determination required by this section.

(i) If the supreme court removes a prosecuting attorney from office or the state or a political subdivision of the state terminates a public employee whom the supreme court, state, or political subdivision of the state knows or has reason to believe is a participant in the fund, the supreme court, state, or political subdivision shall:

- (1) notify the board in writing of the action of the supreme court, state, or political subdivision; and
- (2) provide any information requested by the board to enable the board to make the determination required by this section.

(j) A meeting or hearing held to receive information about or to discuss, before a determination, whether:

- (1) a participant's misconduct constitutes a breach of the condition that the participant's service be honorable; and
- (2) forfeiture of all or part of the participant's retirement benefit is appropriate;

under this section may be held as an executive session under IC 5-14-1.5-6.1(b)(1).

(k) Records containing information about whether:

- (1) a participant's misconduct constitutes a breach of the condition that the participant's service be honorable; and
- (2) forfeiture of all or part of the participant's retirement benefit is appropriate;

under this section are exempt from disclosure under IC 5-14-3-4(b)(21). The board's final determination under this section is available for inspection and copying under IC 5-14-3.

SECTION 7. IC 36-8-6-22 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 22. (a) Notwithstanding any other provision of Indiana law, a fund member in the 1925 fund is required to render

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1 honorable service as a condition for receiving a pension under this
2 chapter.

3 (b) If a fund member commits misconduct while an active
4 member of the 1925 fund, the local board shall conduct a hearing
5 under IC 36-8-8-12.7 to determine whether:

6 (1) the misconduct constitutes a breach of the condition that
7 the fund member's service be honorable; and

8 (2) forfeiture of all or part of the fund member's pension is
9 appropriate.

10 (c) The local board shall consider and balance the following
11 factors against the goals of the public pension laws in making a
12 determination under subsection (b):

13 (1) The fund member's length of service.

14 (2) The reason for the fund member's retirement.

15 (3) The extent to which the fund member's benefit has vested.

16 (4) The fund member's duties.

17 (5) The fund member's history of public service, including the
18 public service covered by the 1925 fund and other public
19 employment or service completed by the fund member.

20 (6) The nature of the misconduct, including the following:

21 (A) The seriousness of the misconduct.

22 (B) Whether the misconduct was a single offense or
23 multiple offenses.

24 (C) Whether the misconduct was an isolated, one (1) time
25 occurrence or a continuing event.

26 (7) The relationship between the misconduct and the fund
27 member's public service.

28 (8) The degree of the fund member's moral turpitude, guilt, or
29 culpability, including the fund member's motives for and
30 personal gain from the misconduct.

31 (9) The availability and adequacy of other punishment or
32 sanctions for the misconduct, including criminal prosecution.

33 (10) Other personal circumstances of the fund member that
34 bear on the justness of forfeiture.

35 (d) The local board shall issue its determination not later than
36 thirty (30) days after the hearing under subsection (b) and shall
37 provide a copy to the fund member.

38 (e) If the local board determines under subsection (b) that the
39 forfeiture of all or part of the fund member's pension is
40 appropriate, the local board shall also determine whether
41 forfeiture of all or part of the benefits to which a surviving spouse,
42 child, or dependent parent of a fund member would otherwise be

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entitled under this chapter is appropriate.

(f) If the local board determines under subsection (b) that a partial forfeiture of the fund member's pension is warranted, the local board shall calculate the fund member's pension as if the fund member had retired or withdrawn from the 1925 fund on the date that the fund member's misconduct first occurred.

(g) If the calculation of the fund member's pension under subsection (f) would result in an excessive pension or an excessive forfeiture, given the nature and extent of the fund member's misconduct, the local board may select a date that is reasonably calculated to impose a forfeiture that reflects both the nature and extent of:

- (1) the fund member's misconduct; and
- (2) the fund member's honorable service.

(h) If a prosecuting attorney undertakes the prosecution of or obtains a criminal conviction against an individual whom the prosecuting attorney knows or has reason to believe is a fund member of the 1925 fund, the prosecuting attorney shall:

- (1) notify the local board in writing of the prosecution or conviction; and
- (2) provide any information requested by the local board to enable the local board to make the determination required by this section.

(i) If a political subdivision of the state removes a public officer from office or terminates a public employee whom the political subdivision knows or has reason to believe is a fund member of the 1925 fund, the political subdivision shall:

- (1) notify the local board in writing of the action of the political subdivision; and
- (2) provide any information requested by the local board to enable the local board to make the determination required by this section.

(j) A meeting or hearing held to receive information about or to discuss, before a determination, whether:

- (1) a fund member's misconduct constitutes a breach of the condition that the fund member's service be honorable; and
- (2) forfeiture of all or part of the fund member's pension is appropriate;

under this section may be held as an executive session under IC 5-14-1.5-6.1(b)(1).

(k) Records containing information about whether:

- (1) a fund member's misconduct constitutes a breach of the

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condition that the fund member's service be honorable; and
 (2) forfeiture of all or part of the fund member's pension is
 appropriate;

under this section are exempt from disclosure under
 IC 5-14-3-4(b)(21). The local board's final determination under this
 section is available for inspection and copying under IC 5-14-3.

SECTION 8. IC 36-8-7-28 IS ADDED TO THE INDIANA CODE
 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 1, 2005]: Sec. 28. (a) Notwithstanding any other provision of
 Indiana law, a fund member of the 1937 fund is required to render
 honorable service as a condition for receiving a pension under this
 chapter.

(b) If a fund member commits misconduct while an active
 member of the 1937 fund, the local board shall conduct a hearing
 under IC 36-8-8-12.7 to determine whether:

- (1) the misconduct constitutes a breach of the condition that
 the fund member's service be honorable; and
- (2) forfeiture of all or part of the fund member's pension is
 appropriate.

(c) The local board shall consider and balance the following
 factors against the goals of the public pension laws in making a
 determination under subsection (b):

- (1) The fund member's length of service.
- (2) The reason for the fund member's retirement.
- (3) The extent to which the fund member's benefit has vested.
- (4) The fund member's duties.
- (5) The fund member's history of public service, including the
 public service covered by the 1937 fund and other public
 employment or service completed by the fund member.
- (6) The nature of the misconduct, including the following:
 - (A) The seriousness of the misconduct.
 - (B) Whether the misconduct was a single offense or
 multiple offenses.
 - (C) Whether the misconduct was an isolated, one (1) time
 occurrence or a continuing event.
- (7) The relationship between the misconduct and the fund
 member's public service.
- (8) The degree of the fund member's moral turpitude, guilt, or
 culpability, including the fund member's motives for and
 personal gain from the misconduct.
- (9) The availability and adequacy of other punishment or
 sanctions for the misconduct, including criminal prosecution.

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(10) Other personal circumstances of the fund member that bear on the justness of forfeiture.

(d) The local board shall issue its determination not later than thirty (30) days after the hearing under subsection (b) and shall provide a copy to the fund member.

(e) If the local board determines under subsection (b) that the forfeiture of all or a part of the fund member's pension is appropriate, the local board shall also determine whether forfeiture of all or a part of the benefits to which a surviving spouse, child, or dependent parent of the fund member would otherwise be entitled under this chapter is appropriate.

(f) If the local board determines under subsection (b) that a partial forfeiture of the fund member's pension is warranted, the local board shall calculate the fund member's pension as if the fund member had retired or withdrawn from the 1937 fund on the date that the fund member's misconduct first occurred.

(g) If the calculation of the fund member's pension under subsection (f) would result in an excessive pension or an excessive forfeiture, given the nature and extent of the fund member's misconduct, the local board may select a date that is reasonably calculated to impose a forfeiture that reflects both the nature and extent of:

- (1) the fund member's misconduct; and
- (2) the fund member's honorable service.

(h) If a prosecuting attorney undertakes the prosecution of or obtains a criminal conviction against an individual whom the prosecuting attorney knows or has reason to believe is a fund member of the 1937 fund, the prosecuting attorney shall:

- (1) notify the local board in writing of the prosecution or conviction; and
- (2) provide any information requested by the local board to enable the local board to make the determination required by this section.

(i) If a political subdivision of the state removes a public officer from office or terminates a public employee whom the political subdivision knows or has reason to believe is a fund member of the 1937 fund, the political subdivision shall:

- (1) notify the local board in writing of the action of the political subdivision; and
- (2) provide any information requested by the local board to enable the local board to make the determination required by this section.

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(j) A meeting or hearing held to receive information about or to discuss, before a determination, whether:

- (1) a fund member's misconduct constitutes a breach of the condition that the fund member's service be honorable; and
- (2) forfeiture of all or part of the fund member's pension is appropriate;

under this section may be held as an executive session under IC 5-14-1.5-6.1(b)(1).

(k) Records containing information about whether:

- (1) a fund member's misconduct constitutes a breach of the condition that the fund member's service be honorable; and
- (2) forfeiture of all or part of the fund member's pension is appropriate;

under this section are exempt from disclosure under IC 5-14-3-4(b)(21). The local board's final determination under this section is available for inspection and copying under IC 5-14-3.

SECTION 9. IC 36-8-7.5-24 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 24. (a) Notwithstanding any other provision of Indiana law, a fund member of the 1953 fund is required to render honorable service as a condition for receiving a pension under this chapter.

(b) If a fund member commits misconduct while an active member of the 1953 fund, the local board shall conduct a hearing under IC 36-8-8-12.7 to determine whether:

- (1) the misconduct constitutes a breach of the condition that the fund member's service be honorable; and
- (2) forfeiture of all or a part of the fund member's pension is appropriate.

(c) The local board shall consider and balance the following factors against the goals of the public pension laws in making a determination under subsection (b):

- (1) The fund member's length of service.
- (2) The reason for the fund member's retirement.
- (3) The extent to which the fund member's benefit has vested.
- (4) The fund member's duties.
- (5) The fund member's history of public service, including the public service covered by the 1953 fund and other public employment or service completed by the fund member.
- (6) The nature of the misconduct, including the following:
 - (A) The seriousness of the misconduct.
 - (B) Whether the misconduct was a single offense or

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multiple offenses.

(C) Whether the misconduct was an isolated, one (1) time occurrence or a continuing event.

(7) The relationship between the misconduct and the fund member's public service.

(8) The degree of the fund member's moral turpitude, guilt, or culpability, including the fund member's motives for and personal gain from the misconduct.

(9) The availability and adequacy of other punishment or sanctions for the misconduct, including criminal prosecution.

(10) Other personal circumstances of the fund member that bear on the justness of forfeiture.

(d) The local board shall issue its determination not later than thirty (30) days after the hearing under subsection (b) and shall provide a copy to the fund member.

(e) If the local board determines under subsection (b) that the forfeiture of all or part of the fund member's pension is appropriate, the local board shall also determine whether forfeiture of all or part of the benefits to which a surviving spouse, child, or dependent parent of the fund member would otherwise be entitled under this chapter is appropriate.

(f) If the local board determines under subsection (b) that a partial forfeiture of the fund member's pension is warranted, the local board shall calculate the fund member's pension as if the fund member had retired or withdrawn from the 1953 fund on the date that the fund member's misconduct first occurred.

(g) If the calculation of the fund member's pension under subsection (f) would result in an excessive pension or an excessive forfeiture, given the nature and extent of the fund member's misconduct, the local board may select a date that is reasonably calculated to impose a forfeiture that reflects both the nature and extent of:

(1) the fund member's misconduct; and

(2) the fund member's honorable service.

(h) If a prosecuting attorney undertakes the prosecution of or obtains a criminal conviction against an individual whom the prosecuting attorney knows or has reason to believe is a fund member of the 1953 fund, the prosecuting attorney shall:

(1) notify the local board in writing of the prosecution or conviction; and

(2) provide any information requested by the local board to enable the local board to make the determination required by

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1 **this section.**

2 **(i) If a consolidated city removes a public officer from office or**
 3 **terminates a public employee whom the consolidated city knows or**
 4 **has reason to believe is a fund member of the 1953 fund, the**
 5 **consolidated city shall:**

6 **(1) notify the local board in writing of the action of the**
 7 **consolidated city; and**

8 **(2) provide any information requested by the local board to**
 9 **enable the local board to make the determination required by**
 10 **this section.**

11 **(j) A meeting or hearing held to receive information about or to**
 12 **discuss, before a determination, whether:**

13 **(1) a fund member's misconduct constitutes a breach of the**
 14 **condition that the fund member's service be honorable; and**

15 **(2) forfeiture of all or part of the fund member's pension is**
 16 **appropriate;**

17 **under this section may be held as an executive session under**
 18 **IC 5-14-1.5-6.1(b)(1).**

19 **(k) Records containing information about whether:**

20 **(1) a fund member's misconduct constitutes a breach of the**
 21 **condition that the fund member's service be honorable; and**

22 **(2) forfeiture of all or part of the fund member's pension is**
 23 **appropriate;**

24 **under this section are exempt from disclosure under**
 25 **IC 5-14-3-4(b)(21). The local board's final determination under this**
 26 **section is available for inspection and copying under IC 5-14-3.**

27 **SECTION 10. IC 36-8-8-12.7 IS AMENDED TO READ AS**
 28 **FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 12.7. (a) This section**
 29 **applies to hearings conducted by local boards concerning**
 30 **determinations of:**

31 **(1) impairment under this chapter; or**

32 **(2) disability under IC 36-8-5-2(g), IC 36-8-6, IC 36-8-7, and**
 33 **IC 36-8-7.5; or**

34 **(3) misconduct that warrants forfeiture of all or part of a fund**
 35 **member's retirement benefit under:**

36 **(A) section 23 of this chapter; or**

37 **(B) IC 36-8-6-22, IC 36-8-7-28, or IC 36-8-7.5-24.**

38 **(b) At least five (5) days before the hearing, the local board shall**
 39 **give notice to the fund member and the safety board of the time, date,**
 40 **and place of the hearing.**

41 **(c) The local board must hold a hearing not more than ninety (90)**
 42 **days after the fund member requests the hearing.**

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(d) At the hearing, the local board shall permit the fund member and the safety board to:

- (1) be represented by any individual;
- (2) through witnesses and documents, present evidence;
- (3) conduct cross-examination; and
- (4) present arguments.

(e) At the hearing, the local board shall require all witnesses to be examined under oath, which may be administered by a member of the local board.

(f) The local board shall, at the request of the fund member or the safety board, issue:

- (1) subpoenas;
- (2) discovery orders; and
- (3) protective orders;

in accordance with the Indiana Rules of Trial Procedure that govern discovery, depositions, and subpoenas in civil actions.

(g) The local board shall have the hearing recorded so that a transcript may be made of the proceedings.

(h) After the hearing, the local board shall make its determinations, including findings of fact, in writing and shall provide copies of its determinations to the fund member and the safety board not more than thirty (30) days after the hearing.

(i) **This subsection does not apply to a hearing to determine whether a fund member's misconduct warrants forfeiture of all or part of the fund member's retirement benefit.** If the local board:

- (1) does not hold a hearing within the time required under subsection (c); or
- (2) does not issue its determination within the time required under subsection (h);

the fund member shall be considered to be totally impaired for purposes of section 13.5 of this chapter and, if the issue before the local board concerns the class of the member's impairment, the member shall be considered to have a Class 1 impairment.

(j) The local board may on its own motion issue:

- (1) subpoenas;
- (2) discovery orders; and
- (3) protective orders;

in accordance with the Indiana Rules of Trial Procedure that govern discovery, depositions, and subpoenas in civil actions.

(k) At the hearing, the local board may exclude evidence that is irrelevant, immaterial, unduly repetitious, or excludable on the basis of evidentiary privilege recognized by the courts.

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(l) At the hearing, the local board may request the testimony of witnesses and the production of documents.

(m) If a subpoena or order is issued under this section, the party seeking the subpoena or order shall serve it in accordance with the Indiana Rules of Trial Procedure. However, if the subpoena or order is on the local board's own motion, the sheriff of the county in which the subpoena or order is to be served shall serve it. A subpoena or order under this section may be enforced in the circuit or superior court of the county in which the subpoena or order is served.

(n) With respect to a hearing conducted for purposes of determining:

- (1) disability under IC 36-8-6, IC 36-8-7, or IC 36-8-7.5; or
- (2) misconduct that warrants forfeiture of all or part of a fund member's retirement benefit under IC 36-8-6-22, IC 36-8-7-28, or IC 36-8-7.5-24;**

the determination of the local board after a hearing is final and may be appealed to the court.

(o) With respect to a hearing conducted for purposes of determining impairment or class of impairment **or making a recommendation to the PERF board concerning misconduct that warrants forfeiture of all or part of a fund member's retirement benefit** under this chapter, the fund member may appeal the local board's determinations **or recommendations**. An appeal under this subsection:

- (1) must be made in writing;
- (2) **for an impairment**, must state the class of impairment and the degree of impairment that is claimed by the fund member;
- (3) **for an impairment**, must include a written determination by the chief of the police or fire department stating that there is no suitable and available work; ~~and~~
- (4) for a forfeiture, must state the basis for the appeal; and**
- ~~(4)~~ **(5)** must be filed with the local board and the PERF board's director no later than thirty (30) days after the date on which the fund member received a copy of the local board's determinations **or recommendations**.

(p) To the extent required by the Americans with Disabilities Act, the transcripts, records, reports, and other materials generated as a result of a hearing, review, or appeal conducted to determine an impairment under this chapter or a disability under IC 36-8-6, IC 36-8-7, or IC 36-8-7.5 must be:

- (1) retained in the separate medical file created for the member;
- and
- (2) treated as a confidential medical record.

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(q) If a local board determines that a fund member described in section 13.3(a) of this chapter has a covered impairment, the local board shall also make a recommendation to the 1977 fund advisory committee concerning whether the covered impairment is an impairment described in section 13.3(c) of this chapter or whether it is an impairment described in section 13.3(d) of this chapter. The local board shall forward its recommendation to the 1977 fund advisory committee.

(r) The 1977 fund advisory committee shall review the local board's recommendation not later than forty-five (45) days after receiving the recommendation and shall then issue an initial determination of whether the disability is in the line of duty or not in the line of duty. The 1977 fund advisory committee shall notify the local board, the safety board, and the fund member of its initial determination.

(s) The fund member, the safety board, or the local board may object in writing to the 1977 fund advisory committee's initial determination under subsection (r) not later than fifteen (15) days after the initial determination is issued. If a written objection is not filed, the 1977 fund advisory committee's initial determination becomes final. If a timely written objection is filed, the 1977 fund advisory committee shall issue a final determination after a hearing. The final determination must be issued not later than one hundred eighty (180) days after the date of receipt of the local board's recommendation.

SECTION 11. IC 36-8-8-23 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 23. (a) Notwithstanding any other provision of Indiana law, a fund member of the 1977 fund is required to render honorable service as a condition for receiving a retirement benefit under this chapter.**

(b) If a fund member commits misconduct while an active member of the 1977 fund, the local board shall conduct a hearing under 12.7 of this chapter to recommend to the PERF board whether:

- (1) the misconduct constitutes a breach of the condition that the fund member's service be honorable; and**
- (2) forfeiture of all or part of the fund member's retirement benefit is appropriate.**

(c) The local board shall consider and balance the following factors against the goals of the public pension laws in making a recommendation under subsection (b):

- (1) The fund member's length of service.**
- (2) The reason for the fund member's retirement.**

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(3) The extent to which the fund member's benefit has vested.

(4) The fund member's duties.

(5) The fund member's history of public service, including the public service covered by the 1977 fund and other public employment or service completed by the fund member.

(6) The nature of the misconduct, including the following:

(A) The seriousness of the misconduct.

(B) Whether the misconduct constituted a single offense or multiple offenses.

(C) Whether the misconduct was an isolated, one (1) time occurrence or a continuing event.

(7) The relationship between the misconduct and the fund member's public service.

(8) The degree of the fund member's moral turpitude, guilt, or culpability, including the fund member's motives for and personal gain from the misconduct.

(9) The availability and adequacy of other punishment or sanctions for the misconduct, including criminal prosecution.

(10) Other personal circumstances of the fund member that bear on the justness of forfeiture.

(d) The local board shall submit its recommendation to the PERF board for review and provide a copy to the fund member not later than thirty (30) days after the hearing under subsection (b). The PERF board shall issue a determination not later than sixty (60) days after receipt of the local board's recommendation and provide a copy to the fund member.

(e) If the local board recommends that the forfeiture of all or part of the fund member's retirement benefit is appropriate, the local board shall also make a recommendation to the PERF board as to whether forfeiture of all or a part of the benefits to which a surviving spouse or a dependent child or parent of the fund member would otherwise be entitled under this chapter is appropriate. If the PERF board determines that the forfeiture of all or part of the fund member's retirement benefit is appropriate, the PERF board shall also determine whether forfeiture of all or part of the benefits to which the surviving spouse or dependent child or parent of the fund member would otherwise be entitled under this chapter is appropriate.

(f) If:

(1) the local board recommends under subsection (b); and

(2) the PERF board determines under subsection (d);

that a partial forfeiture of the fund member's retirement benefit is

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1 warranted, the PERF board shall calculate the fund member's
 2 retirement benefit as if the fund member had retired or withdrawn
 3 from the 1977 fund on the date that the fund member's misconduct
 4 first occurred.

5 (g) If the calculation of the fund member's retirement benefit
 6 under subsection (f) would result in an excessive retirement benefit
 7 or an excessive forfeiture, given the nature and extent of the fund
 8 member's misconduct, the PERF board may select a date that is
 9 reasonably calculated to impose a forfeiture that reflects both the
 10 nature and extent of:

- 11 (1) the fund member's misconduct; and
- 12 (2) the fund member's honorable service.

13 (h) If a prosecuting attorney undertakes the prosecution of or
 14 obtains a criminal conviction against an individual whom the
 15 prosecuting attorney knows, or has reason to believe, is a fund
 16 member of the 1977 fund, the prosecuting attorney shall:

- 17 (1) notify the local board and the PERF board in writing of
 18 the prosecution or conviction; and
- 19 (2) provide any information requested by the local board or
 20 the PERF board to enable the PERF board to make the
 21 determination required by this section.

22 (i) If a political subdivision of the state removes a public officer
 23 from office or terminates a public employee whom the political
 24 subdivision knows or has reason to believe is a fund member of the
 25 1977 fund, the political subdivision shall:

- 26 (1) notify the local board and the PERF board in writing of
 27 the action of the political subdivision; and
- 28 (2) provide any information requested by the local board or
 29 the PERF board to enable the PERF board to make the
 30 determination required by this section.

31 (j) A meeting or hearing held to receive information about or to
 32 discuss, before a determination, whether:

- 33 (1) a fund member's misconduct constitutes a breach of the
 34 condition that the fund member's service be honorable; and
- 35 (2) forfeiture of all or part of the fund member's retirement
 36 benefit is appropriate;

37 under this section may be held as an executive session under
 38 IC 5-14-1.5-6.1(b)(1).

39 (k) Records containing information about whether:

- 40 (1) a fund member's misconduct constitutes a breach of the
 41 condition that the fund member's service be honorable; and
- 42 (2) forfeiture of all or part of the fund member's retirement

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benefit is appropriate;
 under this section are exempt from disclosure under
 IC 5-14-3-4(b)(21). The PERF board's final determination under
 this section is available for inspection and copying under IC 5-14-3.

SECTION 12. IC 36-8-10-12.3 IS ADDED TO THE INDIANA
 CODE AS A NEW SECTION TO READ AS FOLLOWS
 [EFFECTIVE JULY 1, 2005]: Sec. 12.3. (a) Notwithstanding any
 other provision of Indiana law, an employee beneficiary of the
 trust fund is required to render honorable service as a condition
 for receiving a pension under this chapter.

(b) If an employee beneficiary commits misconduct while
 serving as a sheriff of a county or a county police officer, the
 department shall conduct a hearing to determine whether:

- (1) the misconduct constitutes a breach of the condition that
 the employee beneficiary's service be honorable; and
- (2) forfeiture of all or part of the employee beneficiary's
 pension is appropriate.

(c) The department shall consider and balance the following
 factors against the goals of the public pension laws in making a
 determination under subsection (b):

- (1) The employee beneficiary's length of service.
- (2) The reason for the employee beneficiary's retirement.
- (3) The extent to which the employee beneficiary's benefit has
 vested.
- (4) The employee beneficiary's duties.
- (5) The employee beneficiary's history of public service,
 including the public service covered by the trust fund and
 other public employment or service completed by the
 employee beneficiary.
- (6) The nature of the misconduct, including the following:
 - (A) The seriousness of the misconduct.
 - (B) Whether the misconduct constituted a single offense or
 multiple offenses.
 - (C) Whether the misconduct was an isolated, one (1) time
 occurrence or a continuing event.
- (7) The relationship between the misconduct and the employee
 beneficiary's public service.
- (8) The degree of the employee beneficiary's moral turpitude,
 guilt, or culpability, including the employee beneficiary's
 motives for and personal gain from the misconduct.
- (9) The availability and adequacy of other punishment or
 sanctions for the misconduct, including criminal prosecution.

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(10) Other personal circumstances of the employee beneficiary that bear on the justness of forfeiture.

(d) The department shall issue a determination not later than thirty (30) days after the hearing under subsection (b) and shall provide a copy to the employee beneficiary.

(e) If the department determines under subsection (b) that the forfeiture of all or part of the employee beneficiary's pension is appropriate, the department shall also determine whether forfeiture of all or part of the benefits to which a surviving spouse or dependent child or parent of the employee beneficiary would otherwise be entitled under this chapter is appropriate.

(f) If the department determines under subsection (b) that a partial forfeiture of the employee beneficiary's pension is warranted, the department shall direct the trustee to calculate the employee beneficiary's pension as if the employee beneficiary had retired or withdrawn from the trust fund on the date that the employee beneficiary's misconduct first occurred.

(g) If the calculation of the employee beneficiary's pension under subsection (f) would result in an excessive pension or an excessive forfeiture, given the nature and extent of the employee beneficiary's misconduct, the department may select a date that is reasonably calculated to impose a forfeiture that reflects both the nature and extent of:

- (1) the employee beneficiary's misconduct; and
- (2) the employee beneficiary's honorable service.

(h) If a prosecuting attorney undertakes the prosecution of or obtains a criminal conviction against an individual whom the prosecuting attorney knows, or has reason to believe, is an employee beneficiary of the trust fund, the prosecuting attorney shall:

- (1) notify the department in writing of the prosecution or conviction; and
- (2) provide any information requested by the department to enable the department to make the determination required by this section.

(i) A meeting or hearing held to receive information about or to discuss, before a determination, whether:

- (1) an employee beneficiary's misconduct constitutes a breach of the condition that the employee beneficiary's service be honorable; and
- (2) forfeiture of all or part of the employee beneficiary's pension is appropriate;

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1 under this section may be held as an executive session under
 2 IC 5-14-1.5-6.1(b)(1).

3 (j) Records containing information about whether:

4 (1) an employee beneficiary's misconduct constitutes a breach
 5 of the condition that the employee beneficiary's service be
 6 honorable; and

7 (2) forfeiture of all or part of the employee beneficiary's
 8 pension is appropriate;

9 under this section are exempt from disclosure under
 10 IC 5-14-3-4(b)(21). The department's final determination under
 11 this section is available for inspection and copying under IC 5-14-3.

12 SECTION 13. [EFFECTIVE JULY 1, 2005] IC 5-10-5.5-22,
 13 IC 5-10.2-4-11, IC 10-12-2-10.5, IC 33-38-6-28, IC 33-39-7-26,
 14 IC 36-8-6-22, IC 36-8-7-28, IC 36-8-7.5-24, IC 36-8-8-23,
 15 IC 36-8-10-12.3, all as added by this act, and IC 5-14-3-4 and
 16 IC 36-8-8-12.7, both as amended by this act, apply to misconduct
 17 that occurs after June 30, 2005.

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